HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP M/S No. 1136/05
Shri Prabhakar Uniyal

vs

Smt. Chinta Devi

Approved for reporting.

~~Not approved for reporting~~

Date of decision 14.7.2006

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1136 (MS) OF 2005

1. Shri Prabhakar Uniyal, S/o Shri Manohar Lal Uniyal, R/o 79, Tilak Road, Dehradun.
2. Shri Girbeer Singh, S/o Shri Narayan Singh, R/o Kirti Nagar, Village Kankar Devprayag, PO-Jaamal, Tehri Garhwal.
3. Shri Kulanand Dobhal, S/o Shri Vishamber Dutt Dobhal, Electricity Officer, 18, E.C. Road, Dehradun.
4. Shri Dharmanand Joshi, S/o Shri Ram Dutt Joshi, Electricity Office, 18 E.C. Road, Dehradun.
5. Shri Madan Singh, S/o Shri Gopal Singh Bisht, Electricity Office, 18 E.C. Road, Dehradun.
6. Shri Bhim Singh, S/o Shri Dalip Singh Rawat, Electricity Office, 18 E.C. Road, Dehradun.
7. Shri Subhash Vikram Singh, S/o Shri Shamsher Singh, R/o 165, Dharampur, Dehradun.

.....Petitioners.

Versus

1. Smt. Chinta Devi, W/o late Shri Pooran Singh, R/o Ajabpur, Dehradn (deceased).
2. Shri Pratap Bhan Singh, S/o late Shri Pooran Singh, R/o Ajabpur, Dehradun.
3. Smt. Sumitra Devi, W/o late Shri Trilok Bhan Singh,
4. Km. Preeti Chandel (minor), D/o late Shri Trilok Bhan Singh,
5. Master Kirti Singh (minor), S/o late Shri Trilok Bhan Singh,

6. Master Anurag Singh (minor), S/o late Shri Trilok Bhan Singh,
   (through their mother and guardian Smt. Sumitra Devi)
   Respondents no. 3 to 6 all are R/o Village Ajabpur Kalan, Pargana Central Doon, District Dehradun.
7. Smt. Vimla Devi, W/o Shri Raghvender Singh Bisht, D/o late Shri Pooran Singh, R/o 1-C, Teg Bahadur Road, Dehradun.
8. Smt. Chanderkala Devi, W/o Shri Boag Bahadur, D/o late Shri Pooran Singh, r/o Village-Badripur Da, Khas Herbertpur, Pachwadoon, District-Dehradun.
9. Smt. Kunti Devi, W/o Shri Virender Singh Bisht, D/o late Shri Pooran Singh R/o 10, Cement Road, Dehradun.
10. Smt. Vinay Kumari @ Beena, W/o Shri Satish Pal Singh, D/o late Shri Pooran Singh, R/o 19/1, Inder Road, Dehradun.
11. Km. Meena Kumari, D/o late Shri Pooran Singh, R/o Ajabpur Kalan, Dehradun.
12. Km. Manoj, D/o late Shri Savdhan Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
13. Km. Alka, D/o late Shri Savdhan Singh, R/o Ajabpur Kalan, Pargana Central Doon, District-Dehradun.
14. Km. Vandana, D/o late Shri Savdhan Singh, R/o Ajabpur Kalan, Pargana Central Doon, District-Dehradun.
15. Shri Virender Pal Singh, S/o late Shri Shyam Singh, Ajabpur Kalan, Pargana Central Doon, District Dehradun.
16. Smt. Kaushalya Devi, W/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.

17. Shri Hardyesh Kumar, S/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
18. Shri Narendra Kumar, S/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
19. Smt. Meena Kumari, W/o not known D/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
20. Smt. Suman Kuamri, W/o not known, D/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
21. Lalita Kumari, D/o late Shri Inder Pal Singh, R/o Ajabpur Kalan Pargana Central Doon, District Dehradun.
22. Smt. Vijay Kumari, W/o not known, D/o late Shri Inder Pal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
23. Sh. Mahender Pal Singh, S/o late Shri Badal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
24. Km. Anju Singh, D/o late Shri Ravinder Pal Singh, R/o Village and Post Dhadera Roorkee, District Saharanpur.
25. Km. Anuja Singh, D/o Late Shri Ravinder Pal Singh, Ro Village and Post Dhadera, Roorkee, District Saharanpur.
26. Shri Chander Pal Singh, S/o late Shri Badal Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
27. Smt. Shakuntala Devi, W/o late Shri Badam Singh, R/o Village and Post Ajabpur Kalan, Dehradun.

28. Smt. Rajender Kumari, W/o late Shri Digvijay Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
29. Shri Rajeev Singh, S/o late Shri Digvijay Singh, R/o Ajabpur Kalan, Pargana Central Doon, District Dehradun.
30. Smt. Padmini Tomar, W/o Shri Pankaj Singh Tomar, R/o Sant Yamuna Gali, Yamuna Nagar, Haryana.
31. Smt. Ramesh Kumar, W/o Kumar Raghuveer Singh, R/o B.C. Road, Rehari, Jammu Tawi, Jammu.
32. Shri Girish Chand Sharma, S/o late Shri H.C. Bakshi, 134, Karanpur, Dehradun.
33. Shri Mange Ram Gupta, S.S.A. 33, K.V.A. Station, Muni Ki Reti, Tehri Garhwal.
34. Shri Sohan Singh, S/o Shri Gosain Singh Pundir, R/o 94/8, Dharampur, Dehradun.
35. Ist Additional Civil Judge (J.D.), Dehradun.

.....Respondents.

Dated: 14.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Kohli, Sr. Advocate, assisted by Sri I.P. Kohlil, Advocate for the petitioners and Sri Alok Singh, Sr. Advocate, assisted by Sri Gopal Narain, Advocate for the respondents no. 1, 2, 3, 4, 5, 7 to 11 and Standing Counsel for the respondent no. 35.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 7th April, 2001 passed by the learned Ist Addl. Civil Judge (Jr. Division), Dehradun (Annexure No. 5 to the writ petition.)

Briefly stated a suit was filed by the plaintiff/respondents no. 1 to 6 praying for permanent injunction restraining the respondents from interfering in the peaceful possession of the plaintiffs with regard to the passage,

which is owned by them. Prayer अ is mentioned to the following effect:-

"अ– यह कि डिग्री वादीगण के हक में तथा प्रतिवादीगण 1 ता 9 ए के विरूद्व इस अमर की पास की जावे कि स्थायी निषेधाज्ञा द्वारा प्रतिवादी 1 ता 9ए का तथा उनके नौकरों आदि को वाद ग्रस्त रास्ते में आने जाने से तथा किसी प्रकार का प्रयोग करने से रोका जाये तथा **प्रतिवादीगण 1 ता 9 वादीगण के निजि रास्ते में किसी प्रकार का** हस्तक्षेप ना करें।"

In paragraph 1 of the plaint, it has been stated that the plaintiffs along with the defendants/respondent no. 15 to 18 are the owners of the area 0.52 acre in respect of Khasra No. 381/1249.

Further in paragraph 2, respondents have claimed the ownership along with the respondents no. 17 and 18 in respect of Khasra No. 381. Aforesaid paragraph has been explained in paragraph 6. Paragraph 1 and 6 are quoted below:-

"1. यह कि वादीगण तथा प्रतिवादीगण 15 व 18 भूमि खसरा नम्बर रकबा 0.52 एकड़ व दीगर नम्बरान 381/1249 वाके ग्राम परगना केन्द्रिय दून जिला देहरादून के मालिक, स्वामी व काबिज है।

6. यह कि भूमि नं0 381 के उत्तरी भाग तथा 394 के बीच में जो रास्ता है यह रास्ता भूमि खसरा नं0 में है बतौर यह रास्ता वादीगण तथा प्रतिवादीगण, 15 तथा 18 का निजि रास्ता है और वह इस वाद ग्रस्त रास्ते को वादीगण 20 वर्ष से अधिक से केवल अपने निजि प्रयोग के लिये इस्तेमाल करते चले आ रहे है और इस वाद ग्रस्त रास्ते को भूमि खसरा नं0 394 व भूमि खसरा नं0 382 के मालकाना का प्रयोग करने का तथा उसमें आने जाने का तथा उसके किसी प्राकर से भी प्रयोग करने का कोई अधिकार प्राप्त ना था और ना है।"

A written statement has been filed by the petitioners where in paragraph no. 24 of the additional pleas, they have denied the passage towards North of Khasra Plot No. 381.

Further in paragraph 24, it has been mentioned that it is wrong that the passage in suit is the personal or private passage of the plaintiffs and of defendants 15 to 18.

As will appear from the plaint averments as well as the written statement that the respondents have claimed the passage as their own, whereas the personal or private passage has been denied by the petitioners.

Plaintiffs/respondents in paragraph 4 of the amendment application has stated as under:-

"*That in the year, 1961 there was a mutual family partition between the father of the plaintiff no. 1/1 to 1/8 Shri Puran Singh and defendants Nos. 15 to 18 whereby the residential house situated on Khasra Plot No. 381 at Village Ajabpur Kalan was mutually partitioned.*"

The respondents have filed an application for amendment, where paragraph (1-अ) (1-ब) (1-स) (1-द) are sought to be added to the following effect:-

"(1–अ) यह कि प्रतिवादी संख्या –17 द्वारा एक वाद वास्ते बंटवारे वाद संख्या 3/78–79 न्यायालय सहायक कलेक्ट्रेट प्रथम श्रेणी देहरादून के यहाँ दायर किया था जो दिनांक 12.09.79 को डिक्री हुआ था। जिसके फलस्वरूप खसरा नम्बर –381 को आबादी घोषित किया गया था।

(1–ब)यह कि वादी संख्या 1/1 से 1/8 के पिता श्री पूरन सिंह व प्रतिवादी संख्या–15 से 18 के बीच एक पारिवारिक बंटवारा सन् 1961 में हुआ था जिसके फलस्वरूप खसरा नम्बर / 381 में बना मकाल व संलग्न भूमि विभाजित की गयी थी। उक्त बंटवारे के अनुसार मकान के उत्तर का हिस्सा व उसके साथ संलग्न भूमि वादी के हिस्से में आयी थी। जो संलग्न मानचित्र में लाल रंग से दिखाया गया है।

(1–स) यह कि उक्त बंटवारे के अनुसार नम्बर –381 में से .06 एकड़ आम रास्ता पूरब से पष्चिम अजबपुर / मौधरोवाला सडक से मकान की ओर रह गया था जो संलग्न मानचित्र में पीले रंग से दर्षाया गया है बाकी शेष भूमि का वादी एकमात्र मालिक हो गया था। उक्त भूमि वादी के कब्जे में है जिसे वादी अपने निजी रास्ते के रूप में प्रयोग कर रहे है।

(1–द) यह कि उक्त रास्ते का एक भाग जिसका रकबा दृ 06 एकड (संलग्न मानचित्र में पीले रंग से दर्षाया गया है) वादी तथा प्रतिवादी संख्या – 15 से 18 के बीच संयुक्त है, जिसका प्रयोग केवल वहीं करते है। और प्रतिवादी संख्या 1 से 14 व 19 को उसका प्रयोग करने के अधिकार नही है।

(वाद में आगे जिसे निजी रास्ता कहा गया है)

(ii) That para no. 2 and 3 & 16 of the plaint be deleted.

(iii) That the map annexed with the present application be treated as plaint map."

As will appear form the aforesaid proposed amendment, that they have referred about the decree passed on 12th September, 1979 as well as the family partition, which has been entered in the year, 1961. The amendment application was contested by the petitioners, on the ground that the amendment is highly belated and the plaintiffs want to introduce a new case.

The trial Court has allowed the amendment. Petitioners have filed the present petition against the said order and has submitted that in view of the law laid down by the Apex Court in ***Hira Lal Vs. Kalyan Lal and others 1998 (1) ARC 7,*** the admission cannot be allowed to be withdrawn. Relevant observations are quoted below:-

"10. Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of

two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view."

In ***B.K. Narayana Pilai Vs. Parameshwaran Pillai and another (2000) 1 SCC 712,*** it has been observed as under:-

"The principles applicable to; the amendments of the plain are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed shich amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the

pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

On the other hand, the respondents have relied upon the judgment of ***Ali Hasan Vs. Deputy Director of Consolidation 2005 (2) U.D., 701*** and ***Surendra Pal Singh Vs. Jitendra Pal Singh and another 2005 (2) U.D., 390,*** where it has been held that by allowing the amendment no rights are accrued to the parties.

In the case of ***Ali Hasan Vs. Deputy Director of Consolidation 2005(2) U.D., 701*** it has been observed as under:-

"14. It is well settled that by allowing the amendment, no party can get any right and only it is left to the court to decide the dispute in accordance with the pleadings of the parties in view of the law laid down by the Allahabad High Court in Mahesh Narain Shukla Vs. Ram Kishore 1979 (U.P.) R.C.C. Page 213. The relevant observations are quoted below:-

"It is also settled that while deciding an application for amendment, a court is not entitled to consider the truth or falsity of a statement through the amendment. If an amendment is false, the plaintiff will fail in the suit. As such, the court below was wrong in examining the merits of the amendment and rejecting the same on that ground."

15. In the case of ***B.K.N. Pillai Vs. P. Pillai and another 2000 938) ALR S.C. Page 338,*** *the Apex Court has observed as under:-*

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to

allow the amendment is wide and can be exercised at any stage of the proceedings in thue interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach shuld be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

16. The amendment has been refused only on the technical ground. The law regarding amendment is very much clear as has been held in M/s Estrella Rubber Vs. Dass Estate 2001 (3) Civil Court Cases 663 (S.C) after relying upon the judgment of B.K. Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712. The apex courts has observed as under:-

"*The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the*

administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

In ***Surendra Pal Singh Vs. Jitendra Singh and others 2005 (2) U.D., 390,*** it has been observed by this Court as under:-

"15. The expression 'cause of action' has also been interpreted in the case of B.K. Narayan Pillai (supra) where the apex Court after referring the judgment of Cooke vs. Gill (1873) 8 CP 107 has held that the expression 'cause of action' in the present contest does not mean 'every fact which is material to be proved to entitle the plaintiff to succeed'. The relevant observations of the apex court are as under:-

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill in a different context, for if it were so, no material fact could every be amended or added and, of course no one would want to change or add an immaterial allegation by amendment. The expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corpn. Ltd. and it seems to us to be the only possible view tot ake. Any other view would made the rule futile. The words 'new case' have been understood to mean 'new set of ideas' Dornan v. J.W. Ellis and Co. Ltd.; his also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

16. The trial Court shall examine the amendment in order to do substantial justice between the parties as well as for the purpose of determining the real question in

controversy between the parties. The amendment sought by the plaintiff has to be considered by the trial Court in the light of the fact as tot whether by way of amendment cause of action is not going to be changed. If the cause of action remains the same by way of amendment, the court will be able to decide all the controversies involved in the suit so as to avoid the multiplicity of the proceedings. The intention of the legislature by incorporating Order 6 Rule 17 of the Code of Civil Procedure is not to penalize the litigant for the fault of the pleader of the plaintiff but to extend the aid to resole the dispute forever. Thus the technicalities of law should not be allowed to come in the way of substantial justice to the parties, which will minimize the litigation other than the complications."

In ***Muni Lal v. Oriental Fire and General Insurance Co. Ltd., AIR 1996 SC 642,*** the Hon'ble Apex Court held that the relief of amendment should be granted to "render substantial justice without causing injustice to the other party or violating fair-play and the Court should be entitled to grant proper relief even at the stage of appellate forum." Similar view has been reiterated in ***Jagdish Singh v. Nathu Singh, AIR 1992 SC 1604.***

In ***Smt. Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126,*** the Hon'ble Supreme Court observed as under:-

"*The power to allow an amendment is undoubtedly wide and may, at any stage, be properly exercised in the interest of justice, the law of limitation notwithstanding, but the exercise of such far-reaching discretionary power is governed by judicial consideration and wider the discretion greater ought to be the care and circumspection on the part of the Court.*"

In ***M/s Ganesh Trading Co. V. Maoji Ram, AIR 1978 SC 484,*** the Hon'ble Supreme Court observed that where amendment is found to be necessary for promoting the neds of justice and not for defeating it, the application should be allowed. Similar view had been reiterated in ***B.K.N. Pillai v. P. Pillai and another, AIR 2000 SC 614 : 2000 SCFBRC 32.***

In ***Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala, AIR 1964 SC 11,*** the Hon'ble Supreme Court observed as under:-

"It is true that save in exceptional cases, leave to amend under Order VI, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be t take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations added or fresh relief sought by way of amendment. Where, for instance, an amendment is sought which merely clarified an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation of a matter already contained in the original pleading. The present is a fortioti so."

In ***Ramesh Kuamr v. Kesho Ram, AIR 1992 SC 700 : 1992 SCFBRC 322,*** the Hon'bel Supreme Court observed as under:-

"*The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspect which bear on the moulding of the relief occur the Court is not precluded form taking a 'cautious*

cognizance' of the subsequent changes of the fact and law to mould the relief."

Similar view has been reiterated by the Hon'ble Supreme Court in ***Kameshwar Prasad v. Prademanju Agarwal, AIR 1997 SC 2399 : 1997 SCFBRC 274.***

In ***Sampath Kumar v. Ayyakannu and another, AIR 2002 SC 3369*** the Hon'ble Supreme court held that amendment of pleadings is permissible even if the version of a suit for permanent injunction into a suit for declaration for title and recovery of possession is said to be changed for the reason that it would violate multiplicity of litigation, and in case where an independent suit is maintainable, there is no reason as to why same relief cannot be sought by an amendment in the plaint. In order to curtail the multiplicity of the legal proceedings, amendment should be allowed While deciding the said case, the Hon'ble Supreme Court placed reliance upon its earlier judgments in ***Mst. Rukhmaal v. Lala Laxminarayan and others, AIR 1960 Sc 335,*** and ***Siddaligamma and another, v. Mamtha Shenoy, (2001) 8 SCC 561 : 2002 SCFBRC 17.*** The Hon'ble Supreme Court further held that the such an application should be allowed even if it is filed at a belated stage. The Supreme Court further held that it is not permissible for the trial Corut to examine the correctness or genuineness of the contents of the application at the time of entertainment stage in such an application, observing as under:-

"The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment."

Thus in view of the above, the amendment of the pleadings should ordinarily be allowed if the amendment is found to be necessary for just and proper decision of the controversy, if it does not alter the nature of the suit or takes away the accrued right of the parties.

In view of the above, by way of amendment the cause of action shall remain the same as the family partition and the decree refers to the same land and neither it will amount to withdrawal of the admission nor a new plea has been set up.

However, in view of the above, I do not find any infirmity in the order passed by the Civil Judge (Jr. Division), Dehradun (Annexure No. 5 to the writ petition). However, the petitioner shall be given sufficient opportunity to rebut the averments pleaded by way of amendment.

Writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

14.07.2006

Rathour